

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the following project be designated for funding as a Community Housing Development Organization (CHDO) activity under the City's Fiscal Year 2003 HOME Grant Program:

YWCA Community Development Corporation – YWCA Senior Housing  
Acquisition and Construction - \$722,000.00

That the Mayor, on behalf of the City, be authorized to sign a CHDO-Home Financial Terms Contract by and between the City, and YWCA Community Development Corporation, a Community Housing Development Organization (CHDO) under the HOME Program, in the amount of \$722,000.00; and

That the Mayor, be authorized to sign a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power Of Sale) by and between the City, YWCA Community Development Corporation, and the selected construction contractor, upon the recommendation of the Director of the Department of Community and Human Development, and the approval of the City Attorney's Office. (Funds for this project are available in Account No. 09757-71150036-G7104HM-505201 [\$219,068.00] and Account No. 09756-71150036-G7103HM-505204 [\$502,932.00]).

**ADOPTED** this 14th day of September, 2004.

THE CITY OF EL PASO

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Joe Wardy  
Mayor

ATTEST:

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Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

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Lee Ann B. Koehler  
Assistant City Attorney

APPROVED AS TO CONTENT:

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Deborah G. Hamlyn, Deputy CAO  
Quality of Life Services

YWCA/RR993

STATE OF TEXAS                    }  
   }  
COUNTY OF EL PASO            }       CHDO - HOME FINANCIAL TERMS CONTRACT

THIS CONTRACT is made this 14<sup>th</sup> day of September, 2004, by and between CITY OF EL PASO, hereinafter referred to as "City" and YWCA Community Development Corporation hereinafter referred to as "Borrower."

WHEREAS, the City of El Paso has received a formula grant for Fiscal Year 2003 in the amount of \$4,185,000 from the U.S. Department of Housing and Urban Development (HUD) under the HOME Investment Partnerships Program, hereinafter referred to as "HOME", as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990);

WHEREAS, the El Paso City Council meeting in regular session on September 14, 2004, adopted a Resolution establishing a Fiscal Year 2003 HOME project which allows for use of funds by Community Housing Development Organizations, hereinafter referred to as "CHDOS" or "CHDO", and Borrower is a CHDO under the program adopted;

WHEREAS, the City's Director of Community and Human Development has recommended approval of a grant/loan to Borrower, subject to the terms specified hereinbelow, and the El Paso City Council, meeting in regular session on September 14, 2004, by sufficient vote approved such grant/loan to Borrower, subject to the terms specified hereinbelow;

WHEREAS, the HOME funds having been approved for use in Borrower's improvement project, subject to the conditions and terms herein, and Borrower agrees to comply with all applicable HOME Program requirements;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by Borrower from City, the parties hereto do mutually agree to be bound by all terms and conditions of this Contract, and all documents incorporated by reference herein, as follows:

WITNESSETH:

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property is legally described as:

A leasehold estate in a .883 acre parcel being a portion of Lot 11 and all of Lot 12, Block 20, SECOND AMENDED MAP OF WEST YSLETA, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 13, Page 29, Plat Records of El Paso County, Texas, also known and numbered as 115 North Davis Street, El Paso, Texas and being more particularly described on the Survey Drawing attached hereto as Exhibit "G".

The City hereby agrees to lend Borrower funds not to exceed the amount of Three Hundred Fifty Two Thousand and No/100 Dollars (\$352,000.00) subject to the terms hereinafter specified, to be drawn from FY 2003 HOME funds.

A. Borrower agrees to fully and completely comply with all of the applicable terms and conditions of the Community Development Construction Contract, a copy of which is to be attached hereto as Exhibit "A" upon its execution between Borrower and the selected construction contractor. Borrower further agrees to take all necessary action to perfect and protect City's lien position as specified in Section III. of this Contract for the life of the Deed of Trust (With Power of Sale), attached as Exhibit "B" and incorporated by reference herein.

B. City hereby agrees to provide HOME financing for the eligible construction costs according to all terms and conditions as herein specified, including, but not limited to, the following terms and conditions: The City hereby agrees to provide HOME funds allocated to this project as a Grant of THREE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$370,000.00) using HOME Program Grant funds, as evidenced by a Secured Grant Note of even date herewith, attached as Exhibit "C" and incorporated by reference herein. Provided Borrower complies with the terms of this Contract, this grant shall be forgiven over a twenty (20) year period if Borrower remains in compliance with all terms and conditions as herein specified. The City hereby further agrees to provide the remainder of the financing required to fund the eligible construction cost to be financed through public financing in a loan at zero percent (0%) interest. Such loan shall be in the amount of THREE HUNDRED FIFTY TWO THOUSAND AND NO/100 DOLLARS (\$352,000.00) at zero percent (0%) for twenty (20) years with a monthly payment of One Thousand Four Hundred Sixty Six and No/100 Dollars (\$1,466.67), evidenced by Loan Note which is attached hereto as Exhibits "D" beginning on the first day of the month as specified in the Loan Note. The City will provide such public financing, as specified above, upon the following additional terms and conditions:

(1) HOME financing shall be approved and funds shall be advanced to Borrower, subject to the terms described herein, to include but not limited to those contained in Sections III. and IV. below, and any other terms and conditions specified herein.

(2)(a) Disbursement of public funds shall be made upon Receipt by City of Borrower's written request for such, the documentation as required in B (1) above has been provided and upon the approval of the Director of the Department of Community and Human Development. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, the Borrower has failed to fulfill the requirements of this Contract.

(b) Loan payments on the note in the face amount of THREE HUNDRED FIFTY TWO THOUSAND AND NO/100 DOLLARS (\$352,000.00) shall be due on the first day of the month with the first payment due on the first day of the month as specified in the Loan Note. The monthly payment shall be \$1,466.67. Interest on the loan shall accrue at the rate of zero percent (0%) per annum from the date of disbursement. Borrower shall make 240 consecutive monthly loan payments.

(c) Borrower shall have not more than twenty (20) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loans, in accordance with the terms and conditions of the Loan Note.

(d) The purpose of this loan is to provide Borrower with funds to construct Borrower's property located at 115 N. Davis Street as more fully described in the Deed of Trust (With Power of Sale) of even date herewith, attached hereto as Exhibit "B", and incorporated by reference herein. Borrower agrees that within eighteen (18) months from the date of this Contract the twelve (12) rental units shall be completed and further, nine (9) of the rental units shall be occupied by tenant households with incomes that do not exceed sixty percent (60%) of the area median income and paying no more than the HIGH HOME rent established by federal regulations and three (3) of the rental units shall be occupied by tenant households with incomes that do not exceed fifty percent (50%) of the area median income and paying no more than the LOW HOME rent established by federal regulation. There is no other use of said funds authorized by City, and the use of the City's funds by Borrower for any other purpose shall constitute a breach of contract by Borrower for which City may pursue any and all remedies, whether at law or equity, which are available to City.

C. Borrower may prepay at any time all or part of the current balance. Such prepayment, if any is made, will be applied first to any interest due and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the interest rate then in effect under the terms of this Contract. Prepayment will not release Borrower from fulfilling the HOME covenants described in Section IV of this Contract.

## II. REPRESENTATIONS AND WARRANTIES

A. Borrower represents that the information furnished to City upon which City relied to make this loan is correct and true. Borrower hereby represents that each of said Borrower's representatives have the authority and capacity to commit to a financial obligation on behalf of Borrower. Specifically, but not by way of limitation, this authority includes signing a loan agreement, notes, and any security instrument related thereto in incurring financial obligations for construction on the property located at 115 N. Davis Street, El Paso, El Paso County, Texas as more fully described in Exhibit "B" attached hereto and incorporated by reference herein. Borrower further represents that it owns a leasehold estate in any and all buildings referenced above, subject to any and all restrictions, easements, covenants, and other matters of record.

B. Borrower agrees and understands that approval of this loan has been made by consideration of and in reliance upon various data furnished by Borrower, and agrees that should any of said data prove to be false or materially misleading in any way, the City shall have the right to unilaterally terminate this Contract for unremedied breach thereof and demand repayment in full the entire principal amount of the grant, as evidenced by Exhibit "C", and all principal advanced and all accrued interest under the terms of the loan, as evidenced by Exhibit "D", plus all costs of collection.

C. This Contract is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas, for all purposes.

### III. CONDITIONS PRECEDENT

Borrower agrees to fully comply with the following terms and conditions, as a condition precedent to Borrower's receipt of any and all public financing described herein:

A. Borrower will execute all documents necessary to impose the Covenants and Restrictions Running with the Land required by the HOME program described in the Code of Federal Regulations.

B. The Borrower agrees to ensure that City be named in both the performance and payment bonds, if such bonds are required under the terms of the Contract between Borrower and Contractor for the construction of the property described herein.

C. Borrower agrees to grant to City the following collateral as security for the City loan and grant as agreed thereto:

(1) A first lien on the following described real property:

A leasehold estate in as .883 acre parcel being a portion of Lot 11 and all of Lot 12, Block 20, SECOND AMENDED MAP OF WEST YSLETA, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 13, Page 29, Plat Records of El Paso County, Texas, also known and numbered as 115 North Davis Street, El Paso, Texas and being more particularly described on the Survey Drawing attached hereto as Exhibit "G".

D. This lien shall be subservient only to the following described liens on the above described property: NONE

E. Borrower agrees to take any and all necessary action to perfect such lien(s) and to protect City's first lien position in the property described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Contract.

F. Borrower agrees to provide sufficient documentation to satisfy all HOME loan requirements.

G. Borrower shall furnish to City acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of all of the Borrower's indebtedness on the aforementioned property. This insurance coverage shall name the City as an additional insured.

H. Borrower agrees to obtain all necessary permits, licenses and special privileges which may be required by City prior to conducting the construction work on the property subject to this Contract. In the event Borrower must pay any fees for obtaining any of the above items, Borrower agrees to pay such to City. Borrower shall also comply with any County, State or Federal requirements which apply to its construction activities. This is specifically to include but not limited to the HOME “rent limitations” outlined in Exhibit “E” and affordability requirements as noted herein.

I. Borrower understands, covenants and agrees to fully and completely comply with all terms and conditions of the Community Development Construction Contract, Exhibit “A”, including, but not limited to, the timelines for completion of the project as identified therein.

If Borrower breaches any term or condition of this Section III., entitled “Conditions Precedent,” the entire principal amount of the grant, as evidenced by Exhibit “C”, and the entire outstanding principal advanced and all accrued interest under the terms of the loan, as evidenced by Exhibit “D”, shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Contract entitled “Events of Default.”

#### IV. COVENANTS

The following covenants in Subparagraphs A-R of this Section IV. shall apply as long as any amounts are outstanding under the Secured Grant and Loan Notes, unless a long period is specified:

A. Borrower agrees that HOME funds shall be used only for eligible construction costs. Borrower hereby acknowledges and agrees that the HOME funds may not be used for any other purpose.

B. “Eligible construction cost(s)” as the term is used herein shall include the actual acquisition, architectural and construction cost, required appraisals, title searches, insurance, attorney's fees, architectural fees, escrow charges, tax recordation costs and credit reports, all in the amounts associated directly with the construction of the property, as well as relocation payments made by the property owners, in accordance with the City’s Tenant Assistance Policy, to tenants who are displaced or temporarily relocated as a result of HOME projects.

C. Borrower also agrees to comply fully with all requirements of the Tenant Assistance Policies as developed by the City. A copy of the City’s Tenant Assistance Policy has been provided to Borrower during the application process. Borrower further agrees to comply with §92.353 of the Code of Federal Regulations regarding displacement, relocation and acquisition.

D. Borrower agrees that it will not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor

children who reside with them. Borrower agrees to comply with §92.252 of Title 24 of the Code of Federal Regulations, specifically to include, but not limited to Paragraph (4) of said Section.

E. Borrower hereby further agrees that for a period of ten (10) years from the date construction is completed, the constructed property will comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnership Program. Borrower further agrees to comply with CFR §92.250 regarding Maximum Per Unit Subsidy; §92.251 regarding Property Standards; §92.252(a)(b)(c)(d) regarding Qualification as Affordable Housing, of Title 24 of the Code of Federal Regulations, and their subsections and amendments thereto regarding:

- a) rent limitations;
- b) rent schedules;
- c) increases in tenant income;
- d) adjustments of qualifying rent

It is the further intention of this contract that Borrower fulfill the HOME occupancy requirements by reserving 20% of the HOME units that are identified as low HOME rent units for tenants whose income is no more than 50% of the City's median income for their household size. The balance of the HOME units in the project will be rented to tenants whose income is no more than 60% of the City's median income for their household size. The City will provide Borrower with the HUD-approved median income limits for the City on an annual basis whenever the limits are revised by HUD. The City will also provide the Borrower with updated rent limits whenever the HOME rents are revised by HUD. Borrower will be allowed to make adjustments to the project rents in order to comply with rent limit revisions by HUD.

Borrower agrees to comply with §92.216 of Title 24 of the Code of Federal Regulations regarding Income Targeting:

1. Initial Occupancy - 80% of the HOME assisted rental units in this project must be occupied by tenants with annual incomes at 60% of median or less plus twenty percent (20%) of the units with tenants at fifty percent (50%) or less of median income.

2. Annual reexamination.

It is the further intention of this Contract that all applicable HOME requirements and conditions be fulfilled in order to assist low and very low income persons in obtaining suitable housing.

Borrower agrees to comply with §92.253 of Title 24 of the Code of Federal Regulations regarding Tenant and Participant Protections.

F. In order to assure compliance with the Project Requirements of the HOME Program (as defined in Subpart F of Part 92 of Title 24 of the Code of Federal Regulations), Borrower agrees to submit the following documentation to City for review and approval:

1. A copy of the tenant application and a description of the tenant qualification process that Borrower will utilize to verify tenant incomes.

2. A copy of the lease agreement form will be utilized for the subject residential property at 115 N. Davis Street.

G. Borrower agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the constructed structure. Borrower further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law.

H. Furthermore, Borrower agrees for a period of twenty (20) years commencing on the date of completion of the constructed property that the property shall remain affordable to low and very low income individuals and/or families pursuant to deed restrictions without regard to term of mortgage or to transfer of ownership pursuant to §92.252(5) of Title 24 of the Code of Federal Regulations as evidenced by Covenants and Restrictions Running With the Land, attached hereto as Exhibit "E". A definition of low and very low income individuals and/or families is attached as Exhibit "F" and incorporated by reference herein.

I. Borrower agrees that within ninety (90) days after the date the City of El Paso, Office of Housing Rehabilitation, signs the Owner's Acceptance Form for the rehabilitated property, as described herein, Borrower will furnish to City data on the demographic characteristics of tenants occupying the rehabilitated structure initially after rehabilitation. Such data must be of a quality acceptable to the Director of the Department of Community and Human Development. Borrower further agrees to comply with subpart H – "Other Federal Requirements" as noted in §92.350 et. seq. of Title 24 of the Code of Federal Regulations

J. Borrower agrees to comply with the Federal Fair Housing Act and other Federal Rules, regulations and policies applicable to the performance of this Contract.

K. Borrower hereby agrees that in all solicitations for employment applications, Borrower shall hold itself out as an equal opportunity employer. Borrower shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon compensation requirements, if applicable, to Borrower. Borrower agrees to comply with §92.508, (a)(2)(iv), (a)(3)(ii), (a)(3)(iii) of Title 24 of the Code of Federal Regulations regarding recordkeeping.

L. Borrower agrees to execute any and all notes, security agreements, financing statements, Builder's and Mechanic's Lien Contracts and Deeds of Trust (With Power of Sale)



and any other documents necessary for perfection of City's lien in the form submitted by the City.

M. Borrower agrees to close on the Loan advanced herein within thirty (30) consecutive calendar days from the date of approval by the City Council.

N. Upon reasonable request, City shall have the right at all times to inspect Borrower's business premises, and its books and records relating to the requirements of this Contract. Borrower agrees that it will make its premises and records available for such inspection by City.

O. Borrower is prohibited from assigning this Contract in whole or in part in any manner. Borrower hereby understands and agrees that if the rehabilitated property, as described herein, is sold or transferred in whole or in part within twenty (20) year covenant period, as further described hereinabove, without the written approval of the City, the City, at its option, may declare the entire balance of outstanding principal advanced and all accrued interest on the Loan Note, Exhibit "D", and the entire principal amount of the Secured Grant Note, Exhibit "C", immediately due and payable.

P. Borrower hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the lien status of the City in the collateral as described herein, used as security for the City loan and grant.

Q. This Contract may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

**R. BORROWER HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY SUITS, ACTIONS, DEMANDS, LIABILITIES, TYPE OR DESCRIPTION, BROUGHT OR MADE, AND CLAIMS OF ANY CHARACTER, FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S), AND DAMAGE OR DESTRUCTION OF ANY PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THE PERFORMANCE OF THE CONTRACT, OR THE ACTIVITIES CARRIED OUT HEREUNDER. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.**

S. No member, officer, or employee of City, or its designees or agents, no member of the governing body of City and no other public official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Contract during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or

subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Program under this Contract.

Borrower and City agree that the anticipated construction will involve twelve (12) units. No units rehabilitated under this Contract will be exempt from the requirements and conditions noted herein.

If Borrower breaches any term or condition of this Section entitled "Covenants", the entire principal amount of the grant as evidenced by Exhibit "C", and the entire outstanding principal advanced and all accrued interest under the terms of the loan as evidenced by Exhibit "D", may immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Contract, entitled "Events of Default."

#### V. EVENTS OF DEFAULT

A. City has the right to accelerate the payment of the grant and loan, as evidenced by Exhibits "C" and "D", respectively, upon breach of this Contract by Borrower, and City further has the right to declare that the entire principal amount of the grant, and the entire outstanding principal advanced and all accrued interest under the terms of the loan is immediately due and payable by Borrower to City at the time of the contract breach. City's right to accelerate the grant and loan shall apply to all events as specifically designated in Sections III. and IV. of this Contract, and to the following events, but shall not be limited to these events:

(1) material errors in the representations and warranties given to City by Borrower;

(2) Borrower's failure to perform any of the covenants or conditions precedent as stated in this Contract;

(3) any new or unstayed judgment or unsatisfied lien against Borrower in an amount which, in the City's judgment, may impair its security or perfection of its security status regarding the collateral subject to this Contract;

(4) failure to pay principal on time;

(5) Borrower's timely payment of principal, interest or any other amount due by check for which insufficient funds exist;

(6) Borrower's failure to comply with the timeliness required for completion of the units, specified in Exhibit "A"; or

(7) Borrower's failure to comply with the Covenants and Restrictions Running with the Land.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of Borrower's breach. It is hereby understood and agreed that in the event City agrees to a settlement of any breach of contract by Borrower, this shall not preclude the City from exercising its rights for any further or additional breaches of this Contract. This shall also apply to any instances in which the City allows a period of time to pass so that Borrower has an opportunity to remedy any breach of this Contract.

#### VI. BORROWER'S LIABILITY

Borrower understands and agrees that if Borrower fails to comply with any term or condition, as specified in Section III. entitled "Conditions Precedent" or Section IV. entitled "Covenants", any other term or condition of this Contract, or any other term or condition of any document incorporated by reference herein, such that City is entitled to withhold payment of funds under the terms and conditions of this Contract. Borrower will bear sole liability for all obligations in any way related to the rehabilitation of the property described herein and City shall be entitled to all rights and remedies reserved herein.

#### VII. NOTICES

Any communications or notices regarding this Contract shall be effective only if sent postage prepaid, certified mail, return receipt requested to the following addresses, unless either party notifies the other in writing of a change of address:

CITY: City of El Paso  
Attn: Director, Department of  
Community and Human Development  
2 Civic Center Plaza  
El Paso, TX 79901-1196

BORROWER: YWCA Community Development Corporation  
Attn: Cindy Nance, CEO  
1918 Texas  
El Paso, TX 79901

#### VIII. ENTIRE AGREEMENT

This Contract embodies all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy, Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Lee Ann B. Koehler  
Lee Ann B. Koehler  
Assistant City Attorney

APPROVED AS TO CONTENT:

Deborah G. Hamlyn  
Deborah G. Hamlyn, Deputy CAO  
Quality of Life Services

BORROWER(S):

YWCA Community Development Corporation

By: Sharon Carr Leamon

Sharon Carr Leamon  
President, Board of Directors

(Acknowledgment)

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2004, by Joe Wardy, Mayor of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's name (printed):

Notary's Commission Expires:  
\_\_\_\_\_

(Acknowledgment)

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 7<sup>th</sup> day of September, 2004, by Sharon Carr Leamon, President of the Board of Directors of YWCA Community Development Corporation, on behalf of said corporation.

Teresa Gutierrez

Notary Public, State of Texas

Notary's name (printed):

Teresa Gutierrez

Notary's Commission Expires:

January 30, 2006

